IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.631 OF 2002

Bhalchandra Changdev Kanherkar ..Appellant

V/s.

Rama Hari Shahane and others ..Respondents

Mr.P.B.Shah, advocate for appellant
Mr.V.S.Gokhale, advocate with Vijay Ajotikar for respondent Nos.1 & 3

Coram : D.G.Karnik, J

Date : 9th November, 2006

P.C.

1. Heard learned counsel for the parties. This Second Appeal is directed against the Judgment and Order passed by the lower appellate Court allowing the appeal of the original defendant and dismissing the appellant's suit for specific performance.

2. Learned counsel for the appellant submitted that the lower appellate Court erred in exercising his discretion under Section 20 of the Specific Relief Act in refusing to grant the relief of specific performance. He submitted that there were no pleadings on the basis on which the discretion was exercised by the lower appellate Court.

3. The lower appellate Court has taken into consideration the fact of the agreement for sale was executed in the year 1980 and the suit for specific performance filed in the year 1991. In the interegrum respondent had carried out improvements in the land by obtaining a loan from the State Bank of India. In my view this is a circumstance which is material and has been rightly taken into consideration by the lower appellate Court in refusing to grant the relief. In any event, it cannot be said that exercise of the discretion is in way perverse. No substantial question of law arises in the Second Appeal. Hence, the Second Appeal is dismissed summarily.

(D.G.Karnik, J.)